

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Bryan	Team: Squad #10	CCRB Case #: 202006245	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/23/2020 4:00 AM	Location of Incident: 540 Amsterdam Avenue	Precinct: 24	18 Mo. SOL 2/23/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 08/25/2020 12:45 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/14/2020 10:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Nischo	16955	968671	024 PCT
2. POM Frantz Armand	19567	963854	024 PCT
3. POM Eric Lee	05274	936930	020 PCT
4. CPT James Dennedy	00000	918640	DBMN

Officer(s)	Allegation	Investigator Recommendation
A.CPT James Dennedy	Force: Captain James Dennedy used physical force against § 87(2)(b)	
B.POM Anthony Nischo	Force: Police Officer Anthony Nischo used physical force against § 87(2)(b)	
C.POM Frantz Armand	Force: Police Officer Frantz Armand used physical force against § 87(2)(b)	
D.POM Eric Lee	Force: Police Officer Eric Lee used physical force against § 87(2)(b)	

Case Summary

On August 25, 2020, § 87(2)(b) called 911 and was transferred to IAB, where he filed this complaint, which was received at the CCRB on September 14, 2020.

At approximately 4:00 a.m. on August 23, 2020, § 87(2)(b) was at a CVS located at 540 Amsterdam Avenue in Manhattan. As he was checking out at the front register, Captain James Dennedy of Detective Bureau Manhattan Warrants, Police Officer Eric Lee of the 20th Precinct, and Police Officers Anthony Nischo and Frantz Armand, both of the 24th Precinct, entered the store and surrounded § 87(2)(b) who called 911 and said, “I don’t feel safe.” The four officers arrested § 87(2)(b) and escorted him out of the store, allegedly pulling his limbs in different directions (Allegations A, B, C, and D – Force – Physical Force; § 87(2)(g)). The officers transported § 87(2)(b) to the 24th Precinct stationhouse, where he was charged with § 87(2)(b) (Board Review 12 and 13).

BWC footage was received from PO Nischo and PO Armand (Board Review 01-02) and summarized (Board Review 03-04).

Findings and Recommendations

Allegation (A) Force: Captain James Dennedy used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Anthony Nischo used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Frantz Armand used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Eric Lee used physical force against § 87(2)(b)

§ 87(2)(b) stated that he was shopping at CVS while his wife waited outside in their car. When he was about to check out at the front register, he saw approximately 8 to 10 officers enter the store. He asked them how they were doing, and an officer told him that a CVS employee had called them there because § 87(2)(b) was taking a long time and they thought he might be shoplifting. § 87(2)(b) said he needed more time to pick out a birthday card, but the officer told him to hurry up and buy the items in his shopping cart. § 87(2)(b) called 911 and said, “I don’t feel safe.” Within 10 seconds, a second officer grabbed him by his arms and handcuffed him. (He later said an officer whom he could not see, handcuffed him while he was lying face down in the back seat of a police vehicle). Officers (he could not recall which ones) escorted § 87(2)(b) out of the store. The officers behind § 87(2)(b) pushed him and the officers in front of § 87(2)(b) pulled him, but § 87(2)(b) could not recall which officer touched him on which part of his body. § 87(2)(b) told the officers that he had back pain from his recent car accident. Just before § 87(2)(b) was placed inside a police vehicle, the officers grabbed each of his limbs and pulled them in different directions. PO Armand was the most aggressive and held onto one of § 87(2)(b)’s arms while PO Nischo grabbed the other one. § 87(2)(b) did not know which officer grabbed which leg because he was not looking at them (Board Review 07).

§ 87(2)(g)

At 0:11 in BWC footage from PO Nischo, before the sound comes on, Captain Dennedy appears from the right, approaches § 87(2)(b) and grabs § 87(2)(b)’s left hand to handcuff him. § 87(2)(b) takes a step back and PO Armand appears from the left to help handcuff § 87(2)(b). At 0:21 PO Armand, who is standing in front of § 87(2)(b) pushes down on his left wrist with his right hand before letting go to grab § 87(2)(b)’s right arm. Captain Dennedy grabs § 87(2)(b)’s left arm. At 0:25, PO Nischo grabs § 87(2)(b)’s right forearm with his left hand as § 87(2)(b) struggles with the other three officers. PO Armand holds § 87(2)(b) around his torso. At 0:30, the sound comes on as § 87(2)(b)

§ 87(2)(b) says, “You’re hurting me before you gave me a chance to pay, okay? You let me go. I didn’t make a false report. Why are you locking me up, man? Why are you trying to hurt me? I have a fuck...I just got in a car accident, man.” As PO Armand continues to hold § 87(2)(b) around his torso, Captain Dennedy handcuffs § 87(2)(b) behind his back. § 87(2)(b) says, “You going to break my wrists? Come on. Can you take these cuffs off me? I don’t want to buy shit from this store, man. I don’t want to buy shit from this store. I’ll pay \$200 and they can keep everything. Take these cuffs off me and I’m going home, man. Please. I didn’t make a false report. I don’t feel safe. I didn’t say anything else besides, ‘I don’t feel safe.’ How is that a false report?” At 1:05, PO Nischo starts to lead § 87(2)(b) to the entrance to store with his right hand on § 87(2)(b)’s left arm as PO Armand holds his right arm. At 1:15, PO Nischo opens the door and escorts him out of the store, where a marked SUV is parked outside. At 1:29, PO Armand opens the car door and § 87(2)(b) continues arguing with the officers and asking them not to arrest him. At 1:34, PO Nischo tells § 87(2)(b) to get in the car. At 2:23, PO Armand’s hands can be seen on the front of § 87(2)(b)’s shoulders as he attempts to put § 87(2)(b) who is facing him, in the backseat of the car. At 2:30, PO Nischo walks around to the other side of the car behind another uniformed officer whose face cannot be seen (possibly PO Lee). This officer bends into the backseat of the car, where an § 87(2)(b) can be heard (but not seen) yelling behind him. At 2:42, § 87(2)(b) says, “Stop beating me, man.” At 2:55, PO Nischo walks back around to the side of the car facing the sidewalk as § 87(2)(b) can be heard saying, “You’re breaking my arm!” At 3:02, § 87(2)(b) who is partially visible behind PO Armand says, “Now you’re ripping my shirt? Now you’re choking me? Now you’re fucking murdering me?” At 3:11, PO Armand shuts the door of the vehicle with § 87(2)(b) inside (**Board Review 01**).

At 2:32 in PO Armand’s BWC footage, PO Armand faces § 87(2)(b) who is standing in front of the open door of the police vehicle’s backseat. He tells § 87(2)(b) “Have a seat” five times and places his hands on § 87(2)(b)’s shoulders until § 87(2)(b) sits down. § 87(2)(b)’s legs remain outside the vehicle, so PO Armand tells him three times to put his leg in the car. At 2:48, PO Armand’s right hand is visible resting on § 87(2)(b)’s left shoulder. § 87(2)(b) continues to state that officers are beating him and breaking his arms, but other than PO Armand attempting to left § 87(2)(b)’s legs into the backseat, no force is used during this portion of the incident (**Board Review 02**).

According to a Threat Resistance Injury (TRI) report prepared by Captain Dennedy, officers responded to a call for a larceny in progress at the CVS. When they arrived, § 87(2)(b) was being “unruly, aggressive, and making moves to what appeared to the CVS employees that he was going to steal items that he had in his possession [sic].” The TRI stated that they officers asked § 87(2)(b) to leave the store’s premises multiple times, but instead § 87(2)(b) called 911 and falsely stated that he was being harassed and assaulted by the officers on scene. § 87(2)(b) was arrested for § 87(2)(b), at which point officers discovered that he had an active I-Card (**Board Review 06**). Another TRI report Captain Dennedy prepared for the incident lists the type of force used as “wrestling/grappling” and the reason for force as to “overcome resistance or aggression” (**Board Review 07**). The other TRIs prepared for this incident are consistent and include no discrepancies (**Board Review 14, 15, and 16**).

§ 87(2)(b)’s arrest report states that no force was used and he was charged with § 87(2)(b) for calling 911 and saying officers were assaulting him (**Board Review 12**). The Medical Treatment of Prisoner Report (MTPR) prepared by PO Nischo for § 87(2)(b) states that, at the time of the incident, he had just been released from the hospital from a previous car accident and had lacerations on his left arm and stomach prior to officers’ arrival. The report also states that § 87(2)(b) refused medical attention for his injuries (**Board Review 08**).

Per Patrol Guide Procedure 221-01 (BR 17), members of service must consider the following criteria regarding the reasonable use of force: the nature and severity of the crime/circumstances;

actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the MOS; subject's violent history, if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 09**).
- Captain Dennedy has been a member of service for 24 years and has been named as a subject in two prior CCRB complaints and a total of three allegations, one of which was substantiated. § 87(2)(g)
- Case 201310308 involved an allegation of a strip search, which was substantiated.
- PO Nischo has been a member of service for two years, and this is the first CCRB complaint to which he has been a party.
- PO Armand has been a member of service for four years, and this is the first CCRB complaint to which he has been a party.
- PO Lee has been a member of service for sixteen years, and this is the first CCRB complaint to which he has been a party.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of June 16, 2020, the NYC Office of the Comptroller had no record of a Notice of Claim being filed regarding to this incident (**Board Review 10**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 10

Investigator: Robert Bryan Inv. Bryan 12/3/2021
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 12/9/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date